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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 92-64
)	
WIND 'N SEA FM LIMITED)	File No. BPH-901224ME
PARTNERSHIP)	
)	
J.H. COMMUNICATIONS)	File No. BPH-901226MB
)	
For Construction Permit for a)	
New FM Station on Channel 295A)	
in Ocean City, Maryland)	

TO: Honorable Edward Luton
Administrative Law Judge

**MOTION TO STRIKE
MASS MEDIA BUREAU'S
COMMENTS ON PETITION TO INTERVENE**

P.M. Broadcast Engineering, Inc. ("P.M."), licensee of WQMR(FM), Federalsburg, Maryland, hereby moves to strike the "Mass Media Bureau's Comments on Petition to Intervene" ("Comments"), in which the Mass Media Bureau states its opposition to the intervention of P.M. in this proceeding "at this time."

As a preliminary matter, the Mass Media Bureau's Comments are untimely under FCC Rule § 1.294(b), and should therefore be stricken from the record. P.M. filed its Petition to Intervene in this proceeding on May 15, 1992. That petition was served on the Hearing Branch by hand delivery. Accordingly, the Mass Media Bureau's response to that Petition should have been filed within four days or by May 21, 1992. Its response was not filed, however, until a week later on May 28, 1992.

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Substantively, P.M. is frankly astonished by the Bureau's Comments, since P.M. has an absolute right to intervene in this proceeding under FCC Rule § 1.223(a). See, e.g., Radio Lares, 63 F.C.C. 2d 305, 306 (1977); Juarez Communications Corp., 56 R.R. 2d 961 (Rev. Bd. 1984). In both Radio Lares and Juarez, the threat of economic competition alone was considered sufficient to allow intervention as a matter of right. P.M., which operates on an adjacent channel to the proposed applicants, faces not only economic competition but the very real possibility of technical interference as well. This possibility was explicitly recognized by the Chief of the Audio Services Division in the Hearing Designation Order ("HDO") for this proceeding.

The Bureau states that, in its opinion, "P.M.'s Petition is premature. If the Presiding Judge grants the Wind 'N Sea and J.H. Petitions for Leave to Amend, P.M. could then file a Petition for Leave to Intervene [sic] pursuant to Section 1.223(c) of the Commission's rules to protect WQMR(FM)'s signal from prohibited interference which would be caused by the amended proposals."

First, P.M.'s petition is not "premature" since FCC Rule § 1.223(a) requires such petitions to be filed within 30 days of publication of the hearing issues in the Federal Register. P.M.'s right to intervene by virtue of the potential for interference recognized in the HDO is not extinguished merely by

the filing of subsequent amendments. If that were the case, P.M.'s rights as an intervenor would come and go throughout the hearing as amendments are filed and accepted or rejected. Such a mercurial reading of the right to intervene under Section 1.223 is ludicrous.

Furthermore, If P.M. is not granted intervenor status from the beginning, it will have no way of knowing when amendments or other pleadings affecting it are filed in this proceeding. Indeed, P.M. was forced to obtain the amendments mentioned by the Bureau from the hearing docket file in the Commission's Public Reference Room. In light of the actual interference proposed to be caused to WQMR by the existing applicants, it would be unduly harsh and severely prejudicial to require P.M. to periodically review the docket file just to search for pleadings directly affecting it. Intervention is simply the most expeditious way of ensuring that P.M. receives copies of such documents.

No case can be found where a party facing both technical interference and economic competition was refused intervention in an FCC hearing and indeed, FCC Rule § 1.223(a) gives P.M.

an absolute right to intervene in response to the HDO in this proceeding.

Respectfully submitted,

P.M. BROADCAST ENGINEERING, INC.

By:

A handwritten signature in black ink, appearing to read "David M. Silverman", written over a horizontal line.

David M. Silverman
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Its Attorneys

June 3, 1992

CERTIFICATE OF SERVICE

I, Sharon K. Mathis, do hereby certify that copies of the foregoing were sent via first-class, postage prepaid, United States mail, this 3rd day of June, 1992, to the following:

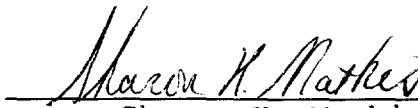
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* Via Hand Delivery.